

DEPARTMENT OF THE ARMY  
SAVANNAH DISTRICT CORPS OF ENGINEERS  
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SAVANNAH, GEORGIA 31402-0889

DISTRICT REGULATION  
NO. 25-1-19

1 October 1999

INFORMATION MANAGEMENT  
Freedom of Information Act Program

1. Purpose. The purpose of this regulation is to designate responsibilities for all District team members who have custody or responsibility for official records for compliance with the Freedom of Information Act (FOIA).

2. Applicability. These procedures apply to all Savannah District elements and all field offices under the supervision of the Savannah District having custody of official Government records or files.

3. References.

- a. Title 5, United States Code, Section 552.
- b. DOD Regulation 5400.7-R, 22 May 97, DOD Freedom of Information Act Program.
- c. Title 32, Part 286, Code of Federal Regulations, DOD Freedom of Information Program.
- d. AR 25-55, 1 November 1997, The Department of the Army Freedom of Information Act Program.
- e. Title 32, Code of Federal Regulations, Part 518--The Army Freedom of Information Act Program.
- f. AR 25-1, 25 March 1997, Army Information Resources Management Program.

4. Background. The following briefly summarizes the basic provisions of the referenced laws and regulations. Further information on definitions and exceptions can be found in those

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sources. The term Department of Defense (DOD) component includes the Corps of Engineers (Corps), and references to the Corps also include other DOD components.

a. Requirements of FOIA.

(1) Each agency, including the Corps, that receives any request for records, which reasonably describes the records and is made in accordance with the above referenced regulations, stating the time, place, fees (references 3b. and 3c.), and procedures to be followed, must make the records promptly available to any person (reference 3a.).

(2) Each agency must determine within 20 working days after the receipt of a request whether to comply with the request and must immediately notify the person making a request of the determination, the reasons for it, and of their right to appeal to the head of the agency any denial determination.

(3) In unusual circumstances, the time limits prescribed may be extended by written notice to the person making a request, setting forth the reasons for time extension and the date on which a determination is expected to be made. No such notice may specify a delay date more than 10 working days. As used in this subparagraph "unusual circumstances" means:

(a) The need to search for and collect records from field offices;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(c) The need for consultation with other agencies that have a substantial interest in the request.

b. Records.

(1) Official Records (AR 25-55, 1-402). The products of data compilation made or received by the Corps in connection with the transaction of public business and preserved primarily as evidence of the organization, policies, functions, decisions, or procedures of the Corps, see AR 25-1, Section 8-4.

(2) Unofficial Records (AR 25-55, 1-402; See also AR 25-1, Section 8-4). The following are not included within the definition of the word "record":

(a) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(b) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(c) Commercially exploitable resources, including but not limited to: maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of the Corps; or computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of the Corps.

(d) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials that are available to the public through an established distribution system with or without charges.

(e) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(f) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of agency team members, and not distributed to other agency employees for their official use.

(g) Information stored within a computer for which there is no existing computer program or printout.

c. Exemptions. FOIA provides nine types of information which may be exempt from disclosure. See AR 25-1, Chapter 8, Records Management Policy, for additional information. Generally, the following nine types of records may be exempt from disclosure:

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(1) Exemption 1: Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized by Executive Order and implemented by regulations.

(2) Exemption 2: Records containing or constituting rules, regulation, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DOD component if their release to the public would substantially hinder the effective performance of a significant function of DOD and they do not impose requirements directly on the general public.

(3) Exemption 3: Records concerning matters where a statute specifically exempts records from disclosure, or that are in accordance with statutes providing for withholding particular types of records.

(4) Exemption 4: Records containing trade secrets, or commercial or financial information that a DOD component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records.

(5) Exemption 5: Records containing internal advice, recommendations, and subjective evaluations, but not factual matters, that are shown in records pertaining to the decision-making process of an agency, whether within or among agencies, or within or among DOD components.

(6) Exemption 6: Records in personnel and medical files, as well as similar personal information in other files that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(7) Exemption 7: Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law.

(8) Exemption 8: Records contained in or related to examination, operation or condition reports prepared by, and for the use of, an agency responsible for the regulation or supervision of financial institutions.

(9) Exemption 9: Records containing geological and geophysical information and data (including maps) concerning wells.

d. Reasons For Not Releasing Documents. There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DOD component or to another Federal agency.

(2) The requester withdraws the request.

(3) The information requested is not a record within the meaning of FOIA and the regulations implementing it.

(4) A record has not been described with sufficient particularity to enable the DOD component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by DOD or DOD component supplementing regulations.

(6) The DOD component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is considered a denial; therefore, notification of appeal rights must be given.)

(7) The record is denied in accordance with procedures set forth in FOIA and the referenced regulations.

e. Denial Tests. To deny a requested record that is in the possession and control of a DOD component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempted from mandatory disclosure by FOIA as outlined in subparagraph 4.c., above, and further discussed in the referenced regulations.

(2) The use of the discretionary authority is deemed unwarranted.

5. Definitions.

a. FOIA Request. A written request for DOD records, made by a member of the public, which either explicitly or implicitly invokes FOIA or referenced regulations specified in paragraph 3 above.

b. Initial Denial Authority (IDA). The Savannah District Counsel is the IDA for all requests administered by the Savannah District. The IDA of safety and accident reports is the Army Safety Center, Fort Rucker, Alabama. The IDA for personnel records is the Total Army Personnel Command. Appeals of denials are made through the Chief Counsel, U.S. Army Corps of Engineers, to the General Counsel of the Army.

c. Information Management Office (IM). IM is used synonymously with the FOIA Officer or the Alternate FOIA Officer.

d. Responsible Team Member. The official custodian of all files and records in the possession of team members under his or her supervision.

e. Point of Contact (POC). Designated by the Division Chief to be responsible for the location, review, and production of documents requested by FOIA requesters.

(1) A POC should have authority to release routinely releasable documents to FOIA requesters.

(2) A POC should have authority to review and release reasonably segregable portions of records covered by an exemption prior to submitting the records to IM for the denial response to the requester. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information, see AR 25-55, 5-203. Also, parts of a requested record may be exempt from disclosure under FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The excised copies shall clearly reflect the denied information by means of BLACKENED areas, which are SUFFICIENTLY BLACKENED so as to reveal no information, see AR 25-55, 1-504b.

(3) A POC shall also have authority to designate or terminate "For Official Use Only" classification of documents within his or her control.

f. FOIA Fees. Fees are charged to FOIA requesters based on their qualifying category, see AR 25-55, Chapter VI, Fee Schedule. Also see DD Form 2086, Record of FOIA Processing Cost. Fees are waived for all requests where fees are a total of \$15.00 or less.

(1) Private requesters - fees are waived for the first 2 hours of time spent searching for records and the first 100 pages of records. The term "search" includes all time spent looking for material that is responsive to a request. Private requesters are charged only fees for search and records over 100 pages. No additional fees may be charged to a private requester.

(2) Commercial requesters - there is no automatic waiver of fees for search or the first 100 pages for commercial requesters. Commercial requesters are charged for search, review, and duplication over 100 pages. If no search or review was involved in completing a FOIA request for a commercial requester and records are less than 100 pages, then the fees will be waived.

(3) Non-Commercial Scientific Institution Requesters - fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages).

(4) Representatives of the news media - fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages).

## 6. Responsibilities.

### a. Information Management Office.

(1) Prepare all correspondence relating to release and denial of records under the Freedom of Information Act.

(2) Ensure that the Savannah District fully complies with the requirements of these laws, and prepare periodical reports.

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(3) Assist Responsible Team Members with complex requests that include FOIA exemptions. If records are exempt from disclosure, IM will prepare the appropriate responses.

(4) Maintain a current list of District POC's for Freedom of Information Act requests.

(5) Prepare administrative record and other necessary information for FOIA appeals and litigation. If a complaint or notice of a lawsuit is received in IM, IM will notify OC of the lawsuit within the same or next business day. (Note: the time period for the Government to answer a FOIA lawsuit is 30 days from the date of the filing of the complaint; therefore, it will be necessary for IM to prepare and submit the administrative record to OC within 5 working days of receipt of the complaint or as designated by OC.)

b. Office of Counsel.

(1) Provide legal advice directly to the FOIA Officer, at the FOIA Officer's request. The FOIA Officer will consult with OC on non-routine requests, and other non-routine FOIA issues.

(2) Handle FOIA litigation and enter all litigation data into the Matter Tracking System's Civil Litigation Notebook.

c. Division Chiefs. Budget and provide all resources necessary to include an applicable funding number to POC's for compliance with the provisions of the Freedom of Information Act. Division Chiefs will also designate a FOIA POC who will be responsible for coordinating and processing FOIA requests. Coordination includes:

(1) The review of FOIA records for releasability,

(2) Reserving conference room space for viewing of files by FOIA requesters,

(3) Releasing routine records to FOIA requesters,

(4) Submitting change of POC notification with telephone and fax number to IM when designations changes,

(5) Advising IM by memorandum that he/she has made a diligent and good faith effort to identify and produce the records requested within the time limits prescribed by law, when no records are found,

(6) Furnishing IM with requested information on labor used and number of copies furnished for IM to assess appropriate fees for records and reporting purposes.

d. Points of Contact.

(1) Locate records or documents coming within the scope of the FOIA request. If records have been retired or shipped to a records holding area, the POC will take necessary action to have the appropriate records retrieved.

(2) Determine whether any documents specified in the request are designated "For Official Use Only," and consult with IM as to whether said designation should be terminated.

(3) Provide routinely releasable records directly to FOIA requesters.

(4) Account for the hours and manpower used in locating records and the number of pages reproduced for billing purposes.

(a) Charges for reproduction of records do not include the time spent at the copier. Charges for copies are assessed at 15¢ per page for an 8½-by 11-inch or 8½-by 14-inch sheet. Each office must perform the search and reproduction at the lowest cost possible.

(b) When it is necessary to bill a FOIA requester for records, DD Form 2086, Record of FOIA Processing Cost will be forwarded to IM for processing.

(c) Proper accounting for labor and reproduction cost is an integral part of required Department of Defense and Department of the Army FOIA reporting procedures.

e. Chief, Information Management Office.

(1) Assist the FOIA Officer in identifying components where requested records may be located.

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(2) Direct that printing requests identified as Freedom of Information Act responses be given priority over other work in order to meet legal time limits.

(3) Ensure that copies of all incoming correspondence referencing the Freedom of Information Act, regardless of addressee, will promptly be furnished to IM.

(4) Expedite any request for retrieval of record from a records holding area.

(5) Expedite interoffice movement of all Freedom of Information Act correspondence and documents. Interoffice correspondence should be delivered within 1 working day.

f. Chief, Resource Management Division.

(1) Assign a charge number for each Freedom of Information Act request.

(2) Establish appropriate accounts for receipt of fees charged for Freedom of Information Act for search, review, and reproduction costs.

7. Releasable Records by Individual Offices are as follows:

(1) Contracting Division: Contracts, solicitations, modifications (without backup), bid abstracts, bid bonds, performance bonds, independent Government estimates (after award), notice to proceed letters, award letters, Administrative Contracting Officer/Contracting Officer Representative appointments, amendments, plan holder lists, pre-award surveys (after award), subcontracting plans and reports filed by the contractor, Statement and Acknowledgment Listings (SF 1413), bids and certifications/representations from any/all bidders (Invitation For Bid only).

(2) Operations Division: Dock permit lists (with name and address only), Corps dredging contracts, abstracts and modifications (without backup).

(3) Construction Division: Pay estimates, Government estimate signature sheet, Government estimate of total costs, Government bid estimate of reasonable contract costs, modifications (without backup), contractor's network analysis, bid bonds, and performance bonds.

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(4) Real Estate Division: Deeds, maps, Homeowners Assistance Program appraisals, executed outgrant instruments, licenses and leases, design memorandums, and audit documents.

(5) Planning Division: Approved decision documents, Environmental Impact Statements.

(6) Engineering Division: Data from hydrologic modeling studies which would show flood and elevation levels of Corps projects.

8. Effective Date. This regulation is effective immediately and will remain effective until rescinded.

/s/  
JOSEPH K. SCHMITT  
COL, EN  
Commanding

DISTRIBUTION C & D